

Remarks

Applicant's invention concerns a finished product, a method and a kit for making that product. A latex wood filler is applied over a base coat of latex paint to which a crackle medium has been applied. The latex wood filler is water based. When it is applied to the crackle medium, the crackle medium contracts causing the wood filler to break up into islands. In between the islands of wood filler, the underlying base coat can be glimpsed. The result is a three-dimensional alligatored surface that simulates the finish on old pieces of furniture.

103 Rejection based on Oates et al. v. Columbus et al.

Applicant's claims 1-4 were rejected as unpatentable under Section 103 over U.S. patent No. 5,601,876 to Oates et al. in view of U.S. patent No. 4,345,044 to Columbus et al. Essential to this rejection is the Patent Office's finding that a "crackle coating" as that term is used in Oates et al. is the same as a "crackle medium" as used in applicant's composition and method claims. It is believed that the finding of equivalence is in error.

Oates et al.

In Oates et al., the term "crackle coating" refers to "an aqueous emulsion of a high molecular weight polymer" (column 3, lines 57-58). This disclosure is followed by a list of suitable high molecular weight polymers.

In Oates et al, the high molecular weight polymer (crackle coating) is applied to a water soluble base coating. As the high molecular weight polymer is applied to the water soluble base coating, the high molecular weight polymer crackles, whereas when the "crackle medium" in applicant's system is applied to the base coat, nothing happens. Crackling is not induced until a latex wood filler is applied to the dried crackle medium. Since Oates et al.'s high molecular weight polymer and applicant's crackle medium react in entirely different manners, they are chemically and functionally different.

More particularly as described by Oates et al., when the high molecular weight polymer (crackle coating as that term is used by Oates et al.) is applied to a base coat, the coating normally dries as the water and coalscents evaporate out through the surface of the coating. But when the high molecular weight polymer (crackle coating) is applied to a water soluble base coating, the water and coalescent agents in the high molecular weight polymer are absorbed through the base coating in addition to the normal evaporative route through the top surface of the crackle coating. This dual evaporative mechanism causes the high molecular weight polymer (crackle coating) to crack. (column 5, lines 36-50).

Applicant's discovery contrasted

In applicant's product and method, the base coat is a dried coat of latex paint or latex stain. The Patent Office may take notice that latex wall paint or the like

is not water soluble and can be washed. The dried paint or stain in applicant's system is inert to the crackle medium. Whereas in Oates et al, the high molecular weight polymer (crackle coating) reacts with the base coating. Hence, both Oates et al.'s base coat and the crackle coating are different from applicant's base coat of dried latex paint or stain over which a coat of crackle medium is applied and dried.

Columbus et al.

Columbus et al. describes a latex wood filler sold by Borden, Inc. Such a latex wood filler is useful in applicant's products and method of forming them but is not disclosed by Columbus et al. A latex wood filler is used for filling holes in wood. When the patch is dried, the latex wood filler can be sanded, stained or painted.

Applicant's discovery contrasted

In applicant's product and method, a latex wood filler is applied to a coat of crackle medium which has been dried to at least to the tack stage. When the latex wood filler is applied, the crackle media contracts causing the latex wood filler to break up into islands of wood filler, allowing a glimpse of the underlying inert base coat to be seen between the islands. The end result of applicant's product and method claims is a deeply alligatored wood product which may be further stained, painted or the like.

Columbus et al. discloses applying the wood filler to a surface in need of filling including such things as "wood, metal, paint and wallboard." (column 1, lines 14-15). The application of the wood filler to a crackle medium as required by applicant's claims is not disclosed and would not be motivated as the purpose of applying a wood filler is to smooth out a blemish such that the surface can be painted. In applicant's product and method, the latex wood filler is used in a manner such that it makes an alligatored surface, not a smooth one.

It is suggested that the inclusion of a latex wood filler of Columbus in the high molecular weight polymer (crackle coating) of Oates et al. would be obvious. The rejection is moot because the combination does not result in the product and method of applicant's claims. Applicant's claims read on a crackle medium as that term is understood in the decorative arts, not high molecular weight polymers of the kind found useful by Oates et al.

103 Rejection based on Oates et al. v. Columbus et al. and Matthews

Applicant's claims 8-10 were rejected as unpatentable in view of Oates et al. and Columbus et al. combined with U.S. patent No. 6,217,336 to Matthews. Matthews is relevant only in that it discloses a kit. The kit, however, has nothing to do with producing applicant's product or practicing applicant's method.


Matthews describes a system for transferring a pattern to a wall. A painter then colors-in (i.e., paints) the design which has been transferred to the surface to create a mural. The kit consists of a main pattern sheet, a replacement pattern sheet that can be used to replace a figure on the main sheet and a set of coloring instructions. Matthews does not make use of a crackle medium or a latex wood filler and is irrelevant to applicant's system for creating an alligatored surface on a piece of furniture or the like.

112 Rejection

Applicant's claims 1 and 8 were rejected under Section 112, first paragraph, as failing to comply with the written description requirement. Applicant has amended her specification to include the word "contract." It is well known that a "crackle medium" contracts when a water based stain or paint is applied. See for example www.growinglifestyle.com previously noted in Amendment A. Since to "contract" in the presence of water is an inherent property of the "crackle medium," it is believed clear that the claims are directed to subject matter which was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the applicant, at the time the application was filed, had possession of the claimed invention.

In view of the above amendments and remarks it is believed that the claims are in condition for allowance. Reconsideration of the application and allowance of the claims are respectfully requested.

Respectfully submitted,


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office at (703) 872-9306 on March 2, 2004.



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